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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,971	10/28/2003	Yasuhiro Oshima	ITECP003	8001
25920 7590 02/13/2009 MARTINE PENILLA & GENCARELLA, LLP 710 LAKEWAY DRIVE SUITE 200 SUNNYVALE, CA 94085				
EXAMINER SHRESTHA, BLEENDRA K				
ART UNIT 3691		PAPER NUMBER		
MAIL DATE 02/13/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/695,971

Applicant(s)

OSHIMA ET AL.

Examiner

BIJENDRA K. SHRESTHA

Art Unit

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,7,10,11 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/ISD)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 11/03/2008

DETAILED ACTION

Claims 1-18 are presented for examination. Applicant filed an amendment on 11/06/2008 amending claims 1, 10, 11 and 16, and canceling claims 3-6, 8-9, 12-15 and 17-18. After careful consideration of applicant's arguments and amendments, new grounds of rejections of the claims necessitated by applicant amendments are established in the instant application as set forth in detail below. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

1. Examiner maintains the rejection of claims 1-2 and 7 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant amendments did not meet the requirements under 35 U.S.C. § 112, second paragraph.

In particular, claim 1 recites in the preamble "a commodity sales system", the body of the claim does not contain any limitations indicating the structure of the system. A system or an apparatus claim should always claim the structure or the hardware that performs the function. Applicant's claimed limitations consist of modules (software according to the specification) that do not describe the structure of the device. Appropriate correction is required.

Double Patenting

2. The examiner maintains nonstatutory double patenting rejection on Application No. 10/674,988 against instant application. The applicant amendments did not put at least one examined application claim patentably distinct from the reference claim(s) and the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

Applicant is requested to file a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) to overcome an actual or provisional rejection based on a nonstatutory double patenting.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 7, 10-11 and 16 are rejected under 35 U.S.C. 102(a) as being anticipated by Asami et al., U.S. Pub No. 2001/0005833 (reference A in attached PTO-892).
5. As per claim 1, Asami et al. teach a commodity sales system that is connected with a user computer in a communicable manner and is used when a user purchases a commodity (see Fig. 1) trades in a used personal computer, said commodity sales system comprising:

a commodity price specification module that receives a purchase request of a selected commodity from the user computer and specifies a commodity price of the selected commodity (see Fig. 8, Product Selection Page (116), Selling Price; Fig. 9);

a storage module that stores a component price table including both a maximum trade-in price and a minimum trade-in price corresponding to each component included in a used personal computer (see Fig. 20; paragraph [0151, 0153]; where used item searching and reservation capabilities is used to search trade-in prices of item desired in terms of recent upper limit recent resale prices (maximum) and price desired by the seller (minimum));

a maximum/minimum price determination module that, when a trade-in request of a used personal computer and component information regarding each of components included in the used personal computer are received from the user computer, reads out a maximum trade-in price and a minimum trade-in price corresponding to each of the components based on the received component information from the component price table, and determines a maximum price of the used personal computer as a sum of the

maximum trade-in prices of the components and a minimum price of the used personal computer as a sum of the minimum trade-in prices of the components (see Fig. 16 and Fig. 18; where used item is assessed indicating resale price upper limit (Y 160.00) and assessment price after deduction for scratches or defects (Y 153.00);

a tentative quote setting module that sets the minimum price determined by the maximum/minimum price determination module to a tentative quote of the used personal computer (see Fig. 7; paragraphs [0121]; where resale prices of used items quoted by registered seller with minimum price set such that if resale price drops below minimum, the seller is informed by e-mail);

a deduction setting module that, when the tentative quote exceeds a first reference value, determines that an assessment of the used personal computer is required upon receipt of the used personal computer by the commodity sales system and sets the minimum price of the used personal computer to a deduction of the selected commodity, which is to be subtracted from a specified price of the commodity, when the tentative quote is not greater than the first reference value but exceeds a second reference value which is smaller than the first reference value, determines that the assessment is not required and sets the tentative quote of the used computer to the deduction of the commodity, and when the tentative quote is not greater than the second reference value, determines that the assessment is not required and sets a preset fixed price, which does not depend upon the tentative quote, to the deduction of the commodity (see Fig. 16, paragraph [0141]; where used product is assessed from upper limit of resale price as indicated by previous sale and deducted for scratches and

defects; trade-in product assessed is deducted from item purchased as shown in Fig. 18 and 19; examiner notes if deduction for scratches and defects is greater than resale price of trade-in product, the assessment of trade-in product is not required); and

an amount payable notification module that subtracts the setting of the deduction from the specified price of the selected commodity to calculate a difference and notifies the user computer of the calculated difference as an amount payable, wherein the amount payable notification module, when the tentative quote exceeds the first reference value, further notifies the user computer of the maximum price and the minimum price of the used personal computer, and notifies that, if a final trade-in price of the used personal computer determined after the assessment exceeds the minimum price, an amount of difference between the final trade-in price and the minimum price is to be refunded to the user (see Fig. 19, Reference Price with Trade-in Credit: 100,000; paragraph [0149]); assessment of used article may result no value for trade-in item and user may have to pay full price for main unit purchased); and

wherein the commodity price specification module, the storage module, the maximum/minimum price determination module, the tentative quote setting module, the deduction setting module, and the amount payable notification module are implemented as program instructions stored on a computer-readable storage medium (see Fig. 1).

6. As per claim 2, Asami et al. teach claim 1 as described above. Asami et al. further teach the system wherein

said deduction setting module sets the deduction to be not less than a preset support price (see Fig. 16; where deduction is based on resale price upper limit).

7. As per claim 7, Asami et al. teach claim 1 as described above. Asami et al. further teach the system wherein

said deduction setting module, in the case where said quote determination module determines trade-in quotes of multiple used articles, sets a total deduction of the selected commodity, which is to be subtracted from the specified commodity price of the selected commodity, according to a sum of the trade-in quotes of the multiple used articles or a sum of deductions set for the respective used articles (see Fig. 18; where total trade-in amount represents total cost multiple used articles).

8. As per claim 10, Asami et al. teach a commodity sales method that is carried out when a user purchases a selected commodity and trades in a used personal computer, said commodity sales method comprising the steps of:

(a) causing a server computer to receive a purchase request of a selected commodity from the user computer and specify a commodity price of the selected commodity (see Fig. 8 and 9);

(b) causing the server computer to receive a trade-in request of a used personal computer and component information regarding each component included in the used personal computer from the user computer, to refer to a component price table including both a maximum trade-in price and a minimum trade-in price corresponding to each component included in a used personal computer, read out a maximum trade-in price and a minimum trade-in price corresponding to each of the components based on the received component information from the component price table ((see Fig. 20; paragraph [0151, 0153]; where used item searching and reservation capabilities is used

to search trade-in prices of item desired in terms of recent upper limit recent resale prices (maximum) and price desired by the seller (minimum)); and

to determine a maximum price of the used personal computer as a sum of the maximum trade-in prices of the components and a minimum price of the used personal computer as a sum of the minimum trade-in prices of the components (see Fig. 16-19; where assessed trade-in item is deducted from purchased price of desired product)

(c) causing the server computer to set the minimum price determined in said step (b) to a tentative quote of the used personal computer (see Fig. 13, resale price (113); where reseller set minimum price for an item);

(d) causing the server computer to, when the tentative quote exceeds a first reference value, determine that an assessment of the used personal computer is required upon receipt of the used personal computer by the commodity sales system and set the minimum price of the used personal computer to a deduction of the selected commodity, which is to be subtracted from a specified price of the commodity,

when the tentative quote is not greater than the first reference value but exceeds a second reference value which is smaller than the first reference value, determine that the assessment is not required and set the tentative quote of the used computer to the deduction of the commodity, and when the tentative quote is not greater than the second reference value, determine that the assessment is not required and set a preset fixed price, which does not depend upon the tentative quote, to the deduction of the commodity (see Fig. 16, paragraph [0141]; where used product is assessed from upper limit of resale price as indicated by previous sale and deducted for scratches and

defects; trade-in product assessed is deducted from item purchased as shown in Fig. 18 and 19; examiner notes if deduction for scratches and defects is greater than resale price of trade-in product, the assessment of trade-in product is not required); and

(e) causing the server computer to subtract the setting of the deduction from the specified price of the selected commodity to calculate a difference (see Fig. 18) and notify the user computer of the calculated difference as an amount payable (see Fig. 19, Reference Price with Trade-in Credit =100,000)

wherein said step (e), when the tentative quote exceeds the first reference value, causes the server computer to further notify the user computer of the maximum price and the minimum price of the used personal computer, and notify that, if a final trade-in price of the used personal computer determined after the assessment exceeds the minimum price, an amount of difference between the final trade-in price and the minimum price is to be refunded to the user (see Fig. 19, Reference Price with Trade-in Credit: 100,000; paragraph [0149]); assessment of used article may result no value for trade-in item and user may have to pay full price for main unit purchased or vice versa).

9. As per claim 11, Asami et al. teach claim 10 as described above. Claim 11 is rejected under same rational as claim 2 described above.

10. As per claim 16, Asami et al. teach claim 10 as described above. Claim 16 is rejected under same rational as claim 7 described above.

Response to Arguments

11. New grounds of rejections of the claims necessitated by applicant amendments are established in the instant application. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Claims 1 and 10 recite intended use of commodity price module, storage module, maximum/minimum price determination module, tentative quote setting module and amount payment notification module. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim (see MPEP 7.37.09).

Asami et al. teach assessment of trade-in product based on resale price upper limit and price of the trade-in product is deducted based on scratches or defects existed in the product providing minimum price of the trade-in product (see Fig. 16, paragraph [0141]). If deduction as a result of scratches or damages is more than trade-in price, trade-in amount will be of no value. Asami et al. further teach calculating reference price with trade-in credit (see Fig. 19). Examiner notes that if trade-in amount is more than purchase amount, the amount difference will be required to be credited to the purchaser.

Conclusion

12. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosures. The following are pertinent to current invention, though not relied upon:

Ellenson et al. (U.S. Pub No. 2003/0200151) teach system and method for facilitating the real-time pricing, sale and appraisal of used vehicles.

Katada et al. (U.S. Pub No. 2004/0230504) teach apparatus unit replacement assisting method and system.

Ly et al. (U.S. patent No. 7,216,094) teach web vehicle ordering system.

Gilbert et al. (U.S. Pub No. 2003/0126062) teach system and method for creating and trading dynamic securities.

Magouirk et al. (U.S. Patent No. 6,941,305) teach customer management system for automobile sales industry.

Seretti et al. (U.S. Patent No. 5,978,776) teach vehicle data exchange system and method therefor.

Takaoka et al. (U.S. Pub No. 2002/099628) teach estimated price providing apparatus, system, method and computer program and computer readable medium.

Walker et al. (U.S. Pub No. 2007/0219868) teach system and method for offering multiple products.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bijendra K. Shrestha whose telephone number is (571) 270-1374. The examiner can normally be reached on 7:00 AM-4:30 PM (Monday-Friday); 2nd Friday OFF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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BKS/3691